

## REMARKS

Claims 1-6 were pending in the application when last examined. Claims 1, 2, and 5 are amended.

### Claim Rejections – 35 USC § 102

Claims 1 and 4 are rejected under 35 USC § 102(b) as being anticipated by Japanese Publication No. 2000-319657 to Igarashi (“Igarashi”).

Claim 1 is patentable over Igarashi at least because it recites, “spraying an asphalt substance from a first outlet” and “releasing a liquid agent from a second outlet.” Igarashi’s figures indicate that both the “asphalt emulsion” and the “adhesion enhancement agent” are released from the same opening/outlet. The machine-translated version of the Igarashi application, which is attached, states that the adhesion enhancement agent is sprinkled *after* the asphalt emulsion, in a serial manner [see the description of Drawing 2 and Claim 1]. The serial application of the asphalt emulsion and the adhesion enhancement agent is consistent with both substances coming out of the same outlet. The use of one outlet for both the asphalt emulsion and the adhesion enhancement agent could result in a practical difference between Igarashi’s method and the invention. For example, Igarashi is limited to serial (as opposed to concurrent) application of the two substances. Thus, Claim 1 is patentable over Igarashi.

Claim 4, which depends from Claim 1, is patentable over Igarashi for at least the same reasons as Claim 1.

### Claim Rejections – 35 USC § 103

Claims 1, 3, 4, and 6 are rejected under 35 USC § 103(a) as being unpatentable over USP 5,342,143 to Corcoran et al. (“Corcoran”).

Claim 1 is patentable over Corcoran at least because it recites, “spraying an asphalt substance from a first outlet” and “releasing a liquid agent from a second outlet.” While Corcoran discloses spraying a liquid, it does not teach or suggest releasing two different substances from two separate outlets. While the Office Action of November 1, 2004 stated that “rain falling on the surface at any point after the asphalt substance had been laid down would meet claim recitations,” Applicant disagrees because 1) the emissions that were released upon the asphalt substance’s contacting the surface may not exist by the time the rain comes (e.g., it

may have been converted through atmospheric chemical reactions), and 2) rain is typically not thought of as being released from an “outlet.” Thus, Claim 1 is patentable over Corcoran.

Claims 3, 4, and 6 depend from Claim 1 and are therefore patentable over Corcoran for the same reasons as Claim 1.

Furthermore, Claim 3 is patentable over Corcoran for the additional reason that it recites, “mixing a liquid agent with water at a volumetric water-to-liquid agent ratio of between about 10:1 and about 50:1.” Even assuming, *arguendo*, that rainfall qualified as a liquid agent, the volume ratio recited in Claim 3 would be difficult to fulfill because it would be difficult to mix the rainfall with a volume of water that is 10 to 50 times greater than the volume of the rainfall.

Furthermore, Claim 6 is patentable over Corcoran for the additional reason that it recites, “spraying the asphalt substance at a rate that is approximately two orders of magnitude greater than the rate of releasing the liquid agent.” Corcoran does not disclose or suggest releasing two different agents at the recited rates. Moreover, even assuming, *arguendo*, that rainfall qualified as a liquid agent, it would be difficult to spray the asphalt substance at a rate that is approximately two orders of magnitude greater than the rate of the rainfall.

For the foregoing reasons, Claims 1, 3, 4, and 6 are in condition for allowance.

#### **Allowable Subject Matter**

Claims 2 and 5 are objected to but indicated to be allowable if rewritten in independent form. Claims 2 and 5 have been written in independent forms and are now in condition for allowance.

### Conclusion

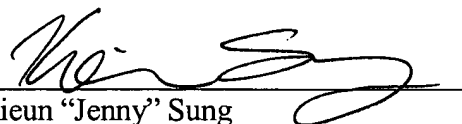
Based on the foregoing reasons, Claims 1-6 are in condition for allowance. Please telephone the undersigned attorney at (650) 833-2121 if there are any questions.

Respectfully submitted,

DLA PIPER RUDNICK GRAY CARY US LLP

Dated: 1/20, 2005

By



Kieun "Jenny" Sung  
Attorney for Applicant  
Reg. No. 48,639

DLA PIPER RUDNICK GRAY CARY LLP

Attn: Patent Department

2000 University Street

East Palo Alto, CA 94303

Telephone: (650) 833-2121

Facsimile: (650) 833-2001